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PATREON, INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13
14

15 BRAYDEN STARK and JUDD OOSTYEN,
on behalf of themselves and all others
16 similarly situated,

17 Plaintiffs,

18 v.

19 PATREON, INC.,

Defendant.

Case No. 3:22-CV-03131-JCS

**DECLARATION OF FRED NORTON IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT**

1 I, Fred Norton, declare as follows:

2 1. I am an attorney admitted to practice law in California and before this Court. I am a
3 partner at The Norton Law Firm PC and counsel of record for Defendant Patreon, Inc. Except where
4 otherwise stated, the statements in this declaration are based on my own personal knowledge and, if
5 called to do so, I could and would testify competently to them.

6 2. This declaration attaches and authenticates documents that were produced by Patreon
7 with Bates prefix PTRN-STARK, identified in Patreon's summary judgment brief with the abbreviated
8 prefix, PS. That prefix refers to documents that were not in Patreon's possession, custody, or control
9 but that were identified as a result of the investigation by counsel. We used an alternative prefix to
10 ensure that evidence obtained in an effort to respond to plaintiffs' claims after the lawsuit was filed
11 would not be mistakenly relied upon to show Patreon's knowledge of some fact at an earlier point in
12 time. For some of the exhibits identified below, one or more of my colleagues at the firm downloaded
13 the version of the document that was ultimately imaged, Bates-stamped, and produced in discovery, but
14 I have also personally reviewed and downloaded from the internet an identical copy of each exhibit
15 whenever I have so stated below.

16 3. Attached as **Exhibit 1** is a true and correct copy of excerpts of the certified transcript of
17 a suppression hearing in the matter of *United States v. Sporn*, Case No. 21-10016 (D. Kan.), which my
18 office obtained by contacting the court reporter for that hearing, Jo Wilkinson, and paying the fee for
19 the transcript, and which Patreon produced with Bates number beginning PTRN-STARK000120. The
20 transcript includes testimony by an employee of Twitter (now X Corp.) concerning a CyberTipline
21 Report that Twitter submitted to the National Center for Missing and Exploited Children (NCMEC) and
22 testimony by the employee and a law enforcement officer concerning the contents of the report.

23 4. Attached as **Exhibit 2** is a true and correct copy of a brief filed by the United States in
24 response to a motion to suppress in the matter of *United States v. Sporn*, Case No. 21-10016 (D. Kan.),
25 which I downloaded from the docket in that case on the US Courts PACER website in October.
26 Patreon produced this document with the Bates number beginning with PTRN-STARK000575.
27 Beginning at PTRN-STARK000612, the government's brief attaches two CyberTipline Reports that
28 Twitter submitted to the National Center for Missing and Exploited Children (NCMEC) concerning the

1 defendant in that case; Report Numbers 61606638 and 71133752. The reports provide the identifying
2 information about the suspect, including his Twitter account user name, email address, cashapp
3 account, IP addresses, and Amazon wishlist URL (PTRN-STARK000615-16, 000626-17) and indicates
4 that the report attached an .mp4 video file that the user had accessed and distributed (PTRN-
5 STARK000620).

6 5. Attached as **Exhibit 3** is a true and correct copy of the admitted exhibits list from the
7 suppression hearing in the matter of *United States v. Sporn*, Case No. 21-10016 (D. Kan.), which I
8 downloaded from docket in that matter on the US Courts PACER website in October. Patreon
9 produced this document with the Bates number beginning with PTRN-STARK000633. **Exhibit 3**
10 indicates that CyberTipline Report 61606638 and 71133752 were both admitted into evidence in that
11 matter.

12 6. Attached as **Exhibit 4** is a true and correct copy of a CyberTipline Report that was
13 offered and admitted into evidence in the matter *United Stated of America v. Richard Brillhart* as
14 Government Exhibit A, according to the opposition filed by the United States, and which I downloaded
15 from the US Courts PACER system in October. Patreon produced this document with the Bates
16 number beginning with PTRN-STARK000345. **Exhibit 4** is a CyberTipline Report that Google
17 submitted to NCMEC concerning the defendant in that case. The report provides the identifying
18 information about the suspect, including his name, cell phone number, verified gmail address, and IP
19 addresses, and indicates that the report attached a video file that the user had accessed and distributed
20 (PTRN-STARK000348).

21 7. Attached as **Exhibit 5** is a true and correct copy of a CyberTipline Report that was
22 offered and admitted into evidence in the matter *United Stated of America v. Richard Brillhart* as
23 Government Exhibit B, according to the opposition filed by the United States, and which I downloaded
24 from the US Courts PACER website in October. Patreon produced this document with the Bates
25 number beginning with PTRN-STARK000354. **Exhibit 5** is a CyberTipline Report that Google
26 submitted to NCMEC concerning the defendant in that case. The report provides the identifying
27 information about the suspect, including his name, cell phone number, verified gmail address, and IP
28 addresses, and indicates that the report attached a video file that the user had accessed and distributed

1 (PTRN-STARK000357-58).

2 8. Attached as **Exhibit 6** is a true and correct copy the sworn declaration of Anjali
 3 Shrestha, a team lead in the Legal Investigations Support team at Google LLC, which was filed in the
 4 matter *United States of America v. Richard Brillhart*, and which I downloaded from the US Courts
 5 PACER website in October. Patreon produced this document with the Bates number beginning with
 6 PTRN-STARK000363. Exhibit 6 includes the following sworn statement on behalf of Google:

7 Google has a strong business interest in enforcing its Terms of Service and ensuring its
 8 services are free of illegal content, including apparent child sexual abuse material
 9 ("CSAM"). Accordingly, Google independently and voluntarily takes steps to monitor
 10 and safeguard its platform. If its products or services were to become associated with
 11 being a haven for abusive content and conduct, including CSAM, users will stop using
 12 them. Ridding its services of CSAM is critically important to protect Google's users,
 13 product, brand, and business interests. Based on these private, non-government interests,
 Google has undertaken voluntary efforts to remove and report CSAM for many years. As
 an illustration of Google's commitment to removing CSAM from its services, Google's
 Transparency Report for 2021 shows that it made 870,319 CyberTipline Reports to the
 National Center for Missing and Exploited Children ("NCMEC").

14 9. Attached as **Exhibit 7** is a true and correct copy of excerpts of the certified transcript of
 15 a suppression hearing in the matter of *United States v. Batista Montijo*, Case No. 2:21-cr-75-SPC-NPM,
 16 which my office obtained by contacting the court reporter for that hearing and paying the fee for the
 17 transcript, and which Patreon produced with Bates number beginning PTRN-STARK000366. The
 18 transcript includes testimony by an employee of Meta (Facebook) concerning a CyberTipline Report
 19 that Meta submitted to the National Center for Missing and Exploited Children (NCMEC) and the
 20 contents of that report.

21 10. Attached as **Exhibit 8** is a true and correct copy of a CyberTipline Report that was
 22 offered and admitted into evidence in the matter *United States v. Batista Montijo*, Case No. 2:21-cr-75-
 23 SPC-NPM as Government Exhibit 1, according to the opposition filed by the United States, and which I
 24 downloaded from PACER in October. Patreon produced this document with the Bates number
 25 beginning with PTRN-STARK000564. **Exhibit 8** is a CyberTipline Report that Meta (Facebook)
 26 submitted to NCMEC concerning the defendant in that case. The report provides the identifying
 27 information about the suspect, including his chat room name, name, date of birth, verified email
 28 address, screen/user name, Facebook profile URL, and IP addresses including a non-mobile IP address,

1 and a physical location, and indicates that the report attached a video file that the user had accessed and
2 distributed (PTRN-STARK000566-67).

3 11. Attached as **Exhibit 9** is a true and correct copy of the Department of Justice's annual
4 report to the Committee on the Judiciary of the United States House of Representatives, pursuant to
5 Section 107 of the USA PATRIOT Improvement and Reauthorization Act of 2005, for calendar year
6 2012, which was produced by Intervenor the United States in response to Patreon's discovery requests
7 in this case, beginning with the Bates number USA-STARK000001.

8 12. Attached as **Exhibit 10** is a true and correct copy of the Department of Justice's annual
9 report to the Committee on the Judiciary of the United States House of Representatives, pursuant to
10 Section 107 of the USA PATRIOT Improvement and Reauthorization Act of 2005, for calendar year
11 2013, which was produced by Intervenor the United States in response to Patreon's discovery requests
12 in this case, beginning with the Bates number USA-STARK000003.

13 13. Attached as **Exhibit 11** is a true and correct copy of the Department of Justice's annual
14 report to the Committee on the Judiciary of the United States House of Representatives, pursuant to
15 Section 107 of the USA PATRIOT Improvement and Reauthorization Act of 2005, for calendar year
16 2014, which was produced by Intervenor the United States in response to Patreon's discovery requests
17 in this case, beginning with the Bates number USA-STARK000005.

18 14. Attached as **Exhibit 12** is a true and correct copy of the Department of Justice's annual
19 report to the Committee on the Judiciary of the United States House of Representatives, pursuant to
20 Section 107 of the USA PATRIOT Improvement and Reauthorization Act of 2005, for calendar year
21 2015, which was produced by Intervenor the United States in response to Patreon's discovery requests
22 in this case, beginning with the Bates number USA-STARK000007.

23 15. Attached as **Exhibit 13** is a true and correct copy of the Department of Justice's annual
24 report to the Committee on the Judiciary of the United States House of Representatives, pursuant to
25 Section 107 of the USA PATRIOT Improvement and Reauthorization Act of 2005, for calendar year
26 2018, which was produced by Intervenor the United States in response to Patreon's discovery requests
27 in this case, beginning with the Bates number USA-STARK000009.

28 16. Attached as **Exhibit 14** is a true and correct copy of the Department of Justice's annual

1 report to the Committee on the Judiciary of the United States House of Representatives, pursuant to
 2 Section 107 of the USA PATRIOT Improvement and Reauthorization Act of 2005, for calendar year
 3 2019, which was produced by Intervenor the United States in response to Patreon's discovery requests
 4 in this case, beginning with the Bates number USA-STARK000011.

5 17. On August 3, 2023, Patreon served on the United States a timely request for documents
 6 seeking "Copies of ALL annual reports required by 18 U.S.C. § 2702(d) submitted by the Attorney
 7 General of the United States to the House and Senate Judiciary Committees concerning disclosures of
 8 records under the Electronic Communications Privacy Act, from January 1, 2013 to the present." In
 9 response, the United States produced the reports for calendar years 2012-2015, 2018, and 2019, but not
 10 any reports covering the years 2016, 2017, 2020, 2021, or 2022. On November 6, 2023, Leslie Vigen,
 11 counsel for Intervenor the United States, informed me by email that the 2020, 2021, and 2022 reports
 12 had not yet been submitted to Congress, and that the Department of Justice had not been able to locate
 13 the 2016 and 2017 reports despite having searched for them.

14 18. Attached as **Exhibit 15** is a true and correct copy of the United States' Supplemental
 15 Responses to specific Requests for Admission (numbers 10, 12, and 13) that the United States provided
 16 in discovery in this litigation.

17 19. Attached as **Exhibit 16** is a true and correct copy of Patreon's Requests for Production
 18 to the United States. In discovery, Patreon sought documents from the United States

- 19 a. "sufficient to show the number of motions filed by the United States in United States
 20 District Courts pursuant to 18 U.S.C. § 2710(b)(3), concerning search warrants seeking
 21 information subject to 18 U.S.C. § 2710, from January 1, 2013 to the present" (RFP 3);
- 22 b. "sufficient to show the number of search warrants obtained by LAW ENFORCEMENT
 23 AGENCIES of the United States government that sought from a 'video tape service
 24 provider' 'personally identifiable information' concerning a 'consumer' (as those terms
 25 are defined in 18 U.S.C. § 2710(a)(1)-(4)), from January 1, 2013 to the present" (RFP
 26 5); and
- 27 c. "sufficient to show the number of voluntary tips or reports that LAW ENFORCEMENT
 28 AGENCIES of the United States government received, from January 1, 2013 to the

1 present, from any ‘video tape service provider’ that included ‘personally identifiable
2 information’ concerning a ‘consumer’ (as those terms are defined in 18 U.S.C. §
3 2710(a)(1)-(4))” (RFP 6).

4 20. The United States objected and refused to provide any documents in response to these
5 requests, arguing that such documents would be irrelevant to the constitutional questions in the case,
6 would disclose confidential information about law enforcement practices, and would be unduly
7 burdensome to locate and produce – even assuming that documents sufficient to show the numbers of
8 such occurrences did exist. With respect to RFP number 6 in particular, Ms. Vigen wrote in her meet
9 and confer letter of September 22, 2023,

10 [T]he FBI has conducted a reasonably diligent inquiry to determine whether it could provide the
11 number of voluntary tips or reports received, from January 1, 2013 to the present, from any
12 “video tape service provider” that included “personally identifiable information” concerning a
“consumer” (as those terms are defined in 18 U.S.C. § 2710(a))....

13 As part of the inquiry, FBI consulted with the divisions and units responsible for maintaining
14 the FBI’s central databases, case management systems, or other systems of records to determine
15 if there was a mechanism for tracking or searching for the type of specific voluntary tips or
16 reports containing the type of the information defined by 18 U.S.C. § 2710. This included the
17 system referenced in the September 8 letter [from Patreon counsel], the National Data Exchange
(N-Dex), as well as other similar systems maintained by the FBI. There is no reasonable way
to centrally search or filter through those databases for the types of tips or reports described in
Request 6.

18 In addition, FBI consulted with the units who are also most likely to have received external tips
19 or reports, such as the National Threat Operations Center and the Internet Crime Complaint
20 Center, and other similar units. Those units do not track the type of voluntary tips sought in the
Request and indicated that they were not aware of any potentially responsive tips or reports
received. [footnote omitted]

21 21. Attached as **Exhibit 17** is a true and correct copy of the United States’ responses to
22 interrogatories that the United States provided in response to discovery Patreon served on it in this
23 litigation. The United States agreed to provide interrogatory responses as part of a proposed
24 compromise to resolve disputes over the adequacy of the United States’ responses to Patreon’s
25 Requests for Production and to avoid motion practice. In accepting the interrogatory responses,
26 Patreon did not withdraw its prior requests for production nor did it concede that the government’s
27 objections were proper or its responses adequate.

28 22. Interrogatory Number 1 in **Exhibit 17** states: “State the number of motions filed by the

1 United States in United States District Courts pursuant to 18 U.S.C. § 2710(b)(3), concerning search
2 warrants seeking information subject to 18 U.S.C. § 2710, from January 1, 2013 to the present.” As
3 explained in greater detail in the objections and responses that the United States provided in response to
4 Interrogatory Number 1, the United States was unable to provide any quantification of the number of
5 such motions.

6 23. Interrogatory Number 2 in **Exhibit 17** states: “State the number of search warrants
7 obtained by LAW ENFORCEMENT AGENCIES of the United States government that sought from a
8 ‘video tape service provider’ ‘personally identifiable information’ concerning a ‘consumer’ (as those
9 terms are defined in 18 U.S.C. § 2710(a)(1)-(4)), from January 1, 2013 to the present.” As explained in
10 greater detail in the objections and responses that the United States provided in response to
11 Interrogatory Number 3, the United States was unable to provide any quantification of the number of
12 such warrants.

13 24. Interrogatory Number 3 in **Exhibit 17** states: “State the number of voluntary tips or
14 reports that LAW ENFORCEMENT AGENCIES of the United States government received, from
15 January 1, 2013 to the present, from any ‘video tape service provider’ that included ‘personally
16 identifiable information’ concerning a ‘consumer’ (as those terms are defined in 18 U.S.C. §
17 2710(a)(1)-(4)).” As explained in greater detail in the objections and responses that the United States
18 provided in response to Interrogatory Number 3, the United States was unable to provide any
19 quantification of the number of such tips.

20 25. Attached as **Exhibit 18** is a true and correct copy of the discovery related meet and
21 confer letter sent on September 9, 2023 to the United States regarding the United States’s objections
22 and responses to Patreon’s Requests for Admissions and Requests for Production, and the United States
23 response to that letter, sent September 22, 2023.

24 26. Attached as **Exhibit 19** is a true and correct copy of a document that I downloaded from
25 the website of the United States Internal Revenue Service on or about November 7, 2023 at
26 <https://www.irs.gov/tax-professionals/irs-continuing-education-providers> and which Patreon produced
27 with Bates number beginning PTRN-STARK005273. **Exhibit 19** bears the title “IRS Continuing
28 Education Providers” and describes the IRS’s rules and procedures for compliance by continuing

1 education providers for tax professionals. Among other things, **Exhibit 19** explains what materials a
 2 provider must submit to obtain a “program number” from the IRS for an approved continuing education
 3 program, and includes a link to “sample program descriptions” that the provider must submit.

4 27. Attached as **Exhibit 20** is a true and correct copy of a document that I downloaded from
 5 the website of the United States Internal Revenue Service on or about November 7, 2023 at
 6 <https://www.irs.gov/pub/irs-utl/sampleprogramdescriptions.pdf> and which Patreon produced with Bates
 7 number beginning PTRN-STARK005274. **Exhibit 20** is the document that is hyperlinked to “sample
 8 program descriptions” phrase in **Exhibit 19**, “IRS Continuing Education Providers.” It bears the title
 9 “Continuing Education Program Descriptions” and states that

10 When applying to become an IRS approved continuing education provider, applicants
 11 must ensure that programs submitted contain the following:

- 12 • The program title should include a specific descriptor of the program content; and
- 13 • The program description must succinctly describe the major elements or content of each
 14 program offered in a manner sufficient for the reviewer to make a determination that the
 15 program covers appropriate subject matter for the category (federal tax, federal tax-
 16 related, federal tax law updates, qualified retirement plan matters, or ethics). The
 description should also include who will be delivering the content (panel, speaker, or
 other method)....

17 The specific examples of program descriptions indicate that the description should indicate
 18 whether the program is pre-recorded and offered “on-line.”

19 28. Attached as **Exhibit 21** is a true and correct copy of a document that I downloaded from
 20 the website of the United States Internal Revenue Service on or about November 7, 2023 at
 21 [https://www.irs.gov/tax-professionals/mandatory-information-reporting-for-continuing-education-](https://www.irs.gov/tax-professionals/mandatory-information-reporting-for-continuing-education-providers)
 22 [providers](https://www.irs.gov/tax-professionals/mandatory-information-reporting-for-continuing-education-providers) and which Patreon produced with Bates number beginning PTRN-STARK005281. **Exhibit**
 23 **21** bears the title “Mandatory Information Reporting for Continuing Education Providers” and
 24 describes the information that the IRS requires continuing education providers for tax professionals to
 25 submit, including the attendee’s first and last name, the attendee’s Preparer Tax Identification Number
 26 (PTIN), and the Program Number. **Exhibit 21** also includes a link to an Excel template document for
 27 reporting this information; a true and correct copy of that template is attached as **Exhibit 22** which
 28 Patreon produced with Bates number PTRN-STARK005282. The template likewise requires

1 submission of the attendee's name, PTIN, and the official program number.

2 29. Attached as **Exhibit 23** is a true and correct copy of a document that I downloaded from
3 the internet on or about November 7, 2023 at [https://mytaxcoursesonline.com/our-courses/individual-](https://mytaxcoursesonline.com/our-courses/individual-programs/2023-annual-federal-tax-refresher-aft-6-hours-online)
4 [programs/2023-annual-federal-tax-refresher-aft-6-hours-online](https://mytaxcoursesonline.com/our-courses/individual-programs/2023-annual-federal-tax-refresher-aft-6-hours-online), and which Patreon produced with
5 Bates number beginning PTRN-STARK005283. **Exhibit 23** is the website of a company called My
6 Tax Courses Online, and offers a "6-hour IRS-approved online video course" to satisfy continuing
7 education requirements for tax professionals.

8 30. Attached as **Exhibit 24** is a true and correct copy of a document that I downloaded from
9 the internet on or about November 7, 2023 at <https://taxprocpe.com/continuing-education/>, and which
10 Patreon produced with Bates number beginning PTRN-STARK005286. **Exhibit 24** is the website of a
11 company called Tax Pro CPE: Cloud-Based Video CPA and the web page offers a catalog of "online
12 video based CE" to satisfy continuing education requirements for tax professionals.

13 31. Attached as **Exhibit 25** is a true and correct copy of a document that I downloaded from
14 the internet in October at <https://insurance.kansas.gov/continuing-education/>, and which Patreon
15 produced with Bates number beginning PTRN-STARK000064. **Exhibit 25** is a page from the Kansas
16 Department of Insurance website that describes continuing education requirements for insurance
17 providers. **Exhibit 25** states that courses may be offered "online" (at PTRN-STARK000071), that
18 courses must be approved by the Kansas Department of Insurance in advance (at PTRN-
19 STARK000066, 70), and that "continuing education completion information must be submitted
20 electronically ... by the continuing education provider" (at PTRN-STARK000066, see also PTRN-
21 STARK000071).

22 32. Attached as **Exhibit 26** is a true and correct copy of a document that I downloaded from
23 the internet on or about October at <https://doi.nebraska.gov/producers/provide-education>, and which
24 Patreon produced with Bates number beginning PTRN-STARK005414. **Exhibit 26** is a page from the
25 Nebraska Department of Insurance website that describes continuing education procedures for
26 education providers in Nebraska. In response to the question, "Are we required to provide students
27 with a Certificate of Completion?" the FAQ portion of the page states "No, this is not required. You're
28 welcome to create your own, but please make it clear that they should not send it to the Department, as

1 the results are required to be uploaded by the course provider electronically.”

2 33. Attached as **Exhibit 27** is a true and correct copy of a document that I downloaded from
 3 the internet in October at <https://www.sdcourt.ca.gov/sdcourt/traffic3/trafficschool>, and which Patreon
 4 produced with Bates number beginning PTRN-STARK000116. **Exhibit 27** is a page from the website
 5 for the San Diego County Superior Court in California concerning compliance with traffic school
 6 obligations for traffic offenses. The web page states that traffic school may be completed online,
 7 specifies that the participant in traffic school must provide their full name, date of birth, and driver’s
 8 license number to be credited with completing the course, and specifies that “Traffic schools are now
 9 required to electronically notify the court of traffic school completion.”

10 34. Attached as **Exhibit 28** is a true and correct copy of a document that I downloaded from
 11 the internet on or about November 3, 2023 at <https://www.idrivesafely.com/traffic-school/california/>,
 12 and which Patreon produced with Bates number beginning PTRN-STARK005291. **Exhibit 28** is a
 13 page from a California traffic school that includes an option to satisfy traffic school obligations by
 14 watching an “online video course.” In addition, the web page states that “When you finish your online
 15 California traffic school course, we process your information that very same day and report your
 16 completion information directly to the DMV”

17 35. On or about November 4, 2023, I viewed the website for Anthology Inc.,
 18 www.anthology.com, and specifically the page at [https://www.anthology.com/products/teaching-and-](https://www.anthology.com/products/teaching-and-learning/learning-effectiveness/blackboard-learn)
 19 [learning/learning-effectiveness/blackboard-learn](https://www.anthology.com/products/teaching-and-learning/learning-effectiveness/blackboard-learn). According to its website, Anthology is a company
 20 that offers learning management software, including a product called Blackboard Learn for students in
 21 kindergarten through twelfth grade.

22 36. Attached as **Exhibit 29** is a thumb drive containing a true and correct copy of a 6
 23 minute, 44 second video that I downloaded from YouTube at
 24 https://www.youtube.com/watch?v=A9najKb_DCM in October. Patreon identified this webpage in its
 25 production at Bates number PTRN-STARK000635. The video, which has the title, “Blackboard:
 26 Tracking Student Access,” describes particular functionality of Blackboard learning management
 27 software to track whether specific students accessed specific instructional materials, including video.
 28 At approximately 0:45 to 0:47 of the video, it illustrates a class assignment to watch a particular

1 embedded video shown in an embedded thumbnail. The remainder of the video explains how the
2 software allows an instructor to run reports that show whether any given student accessed particular
3 educational content, broken down in detail.

4 37. Attached as **Exhibit 30** is a true and correct copy of a document that I downloaded from
5 the internet in October at [https://www.gvsu.edu/cms4/asset/FBFED394-058C-483D-](https://www.gvsu.edu/cms4/asset/FBFED394-058C-483D-1A2FF1EF7D8FE4EC/fac911_statistics-view.pdf)
6 [1A2FF1EF7D8FE4EC/fac911_statistics-view.pdf](https://www.gvsu.edu/cms4/asset/FBFED394-058C-483D-1A2FF1EF7D8FE4EC/fac911_statistics-view.pdf), and which Patreon produced with Bates number
7 beginning PTRN-STARK000636. **Exhibit 30** is a page from a website describing how Blackboard
8 educational software can be configured to track whether particular student users have accessed
9 particular content.

10 38. Attached as **Exhibit 31** is a true and correct copy of a document that I downloaded from
11 the internet in October at <https://www.anthology.com/trust-center/terms-of-use>, and which Patreon
12 produced with Bates number beginning PTRN-STARK004596. **Exhibit 31** is the terms of service for
13 Blackboard. The terms of service as published on the Blackboard and Anthology websites do not
14 include a form distinct and separate from any form setting forth other legal or financial obligations of
15 the consumer.

16 39. Attached as **Exhibit 32** is a true and correct copy of a document that I downloaded from
17 the internet in October at <https://www.anthology.com/trust-center/privacy-statement>, and which Patreon
18 produced with Bates number beginning PTRN-STARK004620. **Exhibit 32** is the Privacy Statement
19 for Anthology. The Privacy Statement as published on the Anthology website does not include a form
20 distinct and separate from any form setting forth other legal or financial obligations of the consumer.

21 40. On or about November 4, 2023, I visited the website for Instructure, Inc., at
22 <https://www.instructure.com/canvas>. According to its website, Instructure is a company that offers
23 learning management software, including a product called Canvas for students in kindergarten through
24 twelfth grade and for students in higher education.

25 41. Attached hereto as **Exhibit 33** is a true and correct copy of excerpts from the Form 10-K
26 filed by Instructure for the year 2021, which I downloaded from the SEC's EDGAR website and which
27 Patreon produced with Bates number beginning PTRN-STARK005295. According to Instructure's 10-
28 K at page 2, the company is "the U.S. LMS [learning management software] market share leader in

1 both Higher Education and paid K-12 with 7,436 global customers, representing Higher Education
2 institutions and districts and schools in more than 100 countries.” At page 3, the company states that
3 “[o]ur customers include State Universities of California, Florida, and Utah, all of the Ivy League
4 universities, international Higher Education and K-12 systems, and many of our nation’s largest K-12
5 system.” At page 3, the Form 10-K describes Instructure’s Canvas platform as including the following
6 elements, quoted verbatim:

- 7 a. Canvas LMS. As the cornerstone of our platform, Canvas LMS is designed to give
8 education customers of all sizes and at every level an extensive set of flexible tools to
9 support and enhance content creation, management, and delivery of face-to-face,
10 blended and online instruction.
- 11 b. Canvas Studio. An online video platform that seamlessly integrates with Canvas LMS,
12 which enables customers to host, manage, edit and deliver impactful and engaging video
13 learning experiences.
- 14 c. Canvas Network. An invitation-only offering allowing institutions to host and deliver
15 large-scale online courses, often called Massive Open Online Courses (“MOOCs”) to a
16 much broader audience than just their own students.
- 17 d. Mastery Assessment. Solutions for assessment management and content that include
18 Mastery Connect, a robust student Assessment Management System (“AMS”), and
19 Mastery View Assessments and Mastery Item Banks, which provides a variety of
20 assessment content solutions and analytics to inform daily instruction in the classroom
21 and data which measure student learning and preparedness for exams mandated by
22 federal and state regulations.
- 23 e. Impact. Solutions designed to help institutions drive adoption of new technology tools
24 and evaluate their impact on student engagement and outcomes.
- 25 f. Elevate K-12 Analytics. A data and analytics solution that combines data from multiple
26 systems to deliver interactive visualizations and dashboards so educators can measure,
27 manage, and improve programs and student outcomes.
- 28 g. LearnPlatform. Tools to empower educational organizations to evaluate, select, and

1 manage the ongoing usage and effectiveness of digital learning products.

2 42. Instructure's Form 10-K, at page 7, further explains that Canvas Studio is "an online
3 video platform designed to enable customers to host, manage, and deliver impactful video learning
4 experiences" and that it "enables teachers and students to ... easily upload media and publish videos to
5 courses that can be viewed across devices and in multiple playback formats ... [and] understand exactly
6 how students are engaging with media to help inform video strategy effectiveness."

7 43. Attached as **Exhibit 34** is a true and correct copy of excerpts of a document that I
8 downloaded from the internet in October at
9 https://community.canvaslms.com/html/assets/Canvas_Instructor_Guide.pdf that bears the title,
10 "Canvas Instructor Guide," which Patreon produced with Bates number PTRN -STARK000641. The
11 entire document is 3900 pages long, so I have attached only excerpts that bear on the particular issues
12 in Patreon's summary judgment motion.

13 44. Attached as **Exhibit 35** is a true and correct copy of a document that I downloaded from
14 the internet in October at [https://michigan.it.umich.edu/news/2021/01/13/does-canvas-allow-faculty-to-track-students-](https://michigan.it.umich.edu/news/2021/01/13/does-canvas-allow-faculty-to-track-students-online/#:~:text=The%20rumor%20he%20hears%20most,video%20viewing%20activity%20in%20Canvas.)
15 [online/#:~:text=The%20rumor%20he%20hears%20most,video%20viewing%20activity%20in%20Can](https://michigan.it.umich.edu/news/2021/01/13/does-canvas-allow-faculty-to-track-students-online/#:~:text=The%20rumor%20he%20hears%20most,video%20viewing%20activity%20in%20Canvas.)
16 [vas. that bears the title, "Does Canvas allow faculty to track students online?"](https://michigan.it.umich.edu/news/2021/01/13/does-canvas-allow-faculty-to-track-students-online/#:~:text=The%20rumor%20he%20hears%20most,video%20viewing%20activity%20in%20Canvas.) which Patreon produced
17 with Bates number PTRN -STARK004541. The article describes the University of Michigan at
18 Dearborn's use of Canvas learning management software and quotes the university's Coordinator of
19 Digital Education as stating that if instructors "use the integrated video system in Canvas to say, post a
20 lecture, faculty can see which students have viewed it, how much of the video they watched, and if they
21 rewatched a video."

22 45. Attached as **Exhibit 36** is a true and correct copy of a document that I downloaded from
23 the internet in October at [https://tuftsedtech.screenstepslive.com/s/18992/m/73355/l/1058411-how-can-](https://tuftsedtech.screenstepslive.com/s/18992/m/73355/l/1058411-how-can-i-see-general-and-individual-viewer-statistics-for-videos-in-media-gallery)
24 [i-see-general-and-individual-viewer-statistics-for-videos-in-media-gallery](https://tuftsedtech.screenstepslive.com/s/18992/m/73355/l/1058411-how-can-i-see-general-and-individual-viewer-statistics-for-videos-in-media-gallery) that bears the title, "How can
25 I see general and individual viewer statistics for videos in Media Gallery?" which Patreon produced
26 with Bates number PTRN-STARK004548. The document explains, at PTRN-STARK004550, how
27 Canvas learning management software can be used to "see metrics about specific students' viewing of
28

the video,” including the student’s name, the number of times the student began watching the video, and the percentage of the video the student watched.

46. Attached as **Exhibit 37** is a true and correct copy of a document that I downloaded from the internet in October at <https://cdn.filepicker.io/api/file/DBymIj3gRcGIFZX0gcEk?&fit=max#:~:text=Page%201-How%20can%20I%20see%20if%20students%20have%20watched%20my%20posted,media%20file%20or%20skipped%20segments.> that bears the title, “How can I see if students have watched my posted video on Canvas?” which Patreon produced with Bates number PTRN -STARK004551. The document states, “As an instructor, you can view analytics for a video or audio file in your course and see how many users have viewed the video or audio file. Analytics can help you see if a user viewed the entire media file or skipped segments.”

47. Attached as **Exhibit 38** is a true and correct copy of a document that I downloaded from the internet in October at <https://community.canvaslms.com/t5/Instructor-Guide/How-do-I-view-the-course-access-report-for-an-individual-user/ta-p/754> that bears the title, “How do I view the course access report for an individual user?” which Patreon produced with Bates number PTRN -STARK004558. **Exhibit 38** demonstrates how to navigate the Canvas learning management software to see “[t]he content a user has viewed” and “[t]he number of times the user has viewed the content.”

48. Attached as **Exhibit 39** is a thumb drive containing a true and correct copy of a 2 minute, 10 second video that I downloaded from YouTube at <https://www.youtube.com/watch?v=IApnO9chPFQ>, with the title, “How to Tell if a Student Viewed an Item in Canvas.” Patreon produced the URL for this video in its production at Bates number PTRN -STARK004579. The video explains how to tell if a particular student watched a particular video that the instructor assigned.

49. Attached as **Exhibit 40** is a thumb drive containing a true and correct copy of an excerpt of a 39 minute, 55 second video that I screen recorded from <https://community.canvaslms.com/t5/InstructureCon-2018/ARC-DU-SOLEIL-A-Simpler-Way-to-Engage-Students-with-Video/m-p/384160>. Patreon identified this webpage in its production at Bates number PTRN-STARK000638. At approximately the 17:00 minute mark where the recording begins,

1 the video discusses how the software indicates whether a particular student watched a particular video.

2 50. Attached as **Exhibit 41** is a true and correct copy of a document that I downloaded from
3 the internet in October at <https://www.instructure.com/policies/terms-of-use>, and which Patreon
4 produced with Bates number beginning PTRN-STARK004789. **Exhibit 41** is the Terms of Service for
5 Instructure, including Canvas. The Terms of Service as published on the Instructure websites do not
6 include a form distinct and separate from any form setting forth other legal or financial obligations of
7 the consumer.

8 51. Attached as **Exhibit 42** is a true and correct copy of a document that I downloaded from
9 the internet in October at <https://www.instructure.com/policies/privacy>, and which Patreon produced
10 with Bates number beginning PTRN-STARK004777. **Exhibit 42** is the Product Privacy Notice for
11 Instructure, including Canvas. The Privacy Notice as published on the Instructure websites does not
12 include a form distinct and separate from any form setting forth other legal or financial obligations of
13 the consumer.

14 52. Attached as **Exhibit 43** is a true and correct copy of a document that I downloaded from
15 the internet in October from the chrome web store located at
16 <https://chrome.google.com/webstore/detail/disconnect/jeoacafpbcihiomhlakheieifhpjdfeo> , and which
17 Patreon produced with Bates number PTRN -STARK005413. **Exhibit 43** is the download page for the
18 Disconnect tool, and describes the tool as having been named the “best privacy tool by the New York
19 Times” in 2016, as the Innovation Award Winner for the Best Privacy and Security Software at South
20 by Southwest in 2015, one of the 20 best innovations of the year by Popular Science, and one of the
21 best Chrome extensions by Lifehacker. The exhibit explains that Disconnect enables users to “visualize
22 and block the invisible websites that track you.” As shown on **Exhibit 43**, the Chrome web store
23 indicates that the Disconnect tool had, at the time of my download, 3,141 reviews and an average rating
24 between 4 and 5 stars on a 5-star scale.

25 53. Attached as **Exhibit 44** is a true and correct copy of a document that I downloaded from
26 the internet in October at <https://disconnectme.com/trackers> and which
27 Patreon produced with Bates number beginning PTRN-STARK000014. **Exhibit 44** describes the types
28 of trackers that the Disconnect tool tracks and blocks, including trackers that collect and retain “data

1 regarding a particular user's or device's activity across multiple websites or applications that aren't
2 owned by the data collector."

3 54. Attached as **Exhibit 45** is a true and correct copy of a document that I downloaded from
4 the internet in October at <https://disconnectme/disconnect/help>, and which Patreon produced with Bates
5 number beginning PTRN-STARK000022. **Exhibit 45** describes the Disconnect tool as permitting a
6 user to identify and block web tracking by specific platforms, including specifically "facebook."

7 55. Attached as **Exhibit 46** is a true and correct copy of a document that I downloaded from
8 the internet in October at <https://disconnectme/consumer>, and which Patreon produced with Bates
9 number beginning PTRN-STARK000046. **Exhibit 46** explains (at PTRN-STARK000046) that the
10 Disconnect tool has "over 750 million users" and can be used to "[b]lock trackers in websites, apps,
11 and email." **Exhibit 46** further explains (at PTRN-STARK000056) that the Disconnect tool
12 "prevent[s] trackers from collecting sensitive data and connecting online activity back to you through
13 cookies, pixels, IPs, fingerprint data, and other surveillance technologies."

14 56. Attached as **Exhibit 47** is a true and correct copy of a document that I downloaded from
15 the internet in October at <https://www.ghostery.com/ghostery-ad-blocker>, and which Patreon produced
16 with Bates number beginning PTRN-STARK000024. **Exhibit 47** describes Ghostery as a mobile app
17 that blocks "trackers that carry your personal information across the web."

18 57. Attached as **Exhibit 48** is a true and correct copy of a document that I downloaded from
19 the internet in October at [https://chrome.google.com/webstore/detail/ghostery-privacy-ad-](https://chrome.google.com/webstore/detail/ghostery-privacy-ad-blo/mlomiejdfkolichcflejclbmpeaniij)
20 [blo/mlomiejdfkolichcflejclbmpeaniij](https://chrome.google.com/webstore/detail/ghostery-privacy-ad-blo/mlomiejdfkolichcflejclbmpeaniij), and which Patreon produced with Bates number beginning
21 PTRN-STARK000033. **Exhibit 48** states that Ghostery has "more than 100+ million downloads
22 worldwide."

23 58. Attached as **Exhibit 49** is a true and correct copy of a document I downloaded from the
24 Washington Post website in October at [https://www.washingtonpost.com/technology/2021/08/29/stop-](https://www.washingtonpost.com/technology/2021/08/29/stop-facebook-tracking/)
25 [facebook-tracking/](https://www.washingtonpost.com/technology/2021/08/29/stop-facebook-tracking/), and which Patreon produced with Bates number beginning PTRN-STARK005221.
26 **Exhibit 49** is an article titled "How to block Facebook from snooping on you" and is dated September
27 29, 2021.

28 59. Attached as **Exhibit 50** is a true and correct copy of a document I downloaded from the

1 CNET website in October at [https://www.cnet.com/news/privacy/this-privacy-setting-helps-keep-](https://www.cnet.com/news/privacy/this-privacy-setting-helps-keep-facebook-from-tracking-you/)
2 [facebook-from-tracking-you/](https://www.cnet.com/news/privacy/this-privacy-setting-helps-keep-facebook-from-tracking-you/), and which Patreon produced with Bates number beginning PTRN-
3 STARK005226. **Exhibit 50** is an article titled “This Privacy Setting Helps Keep Facebook From
4 Tracking You” and is dated December 12, 2022. It describes a Facebook privacy setting that the
5 articles says was made available in 2019.

6 60. Attached as **Exhibit 51** is a true and correct copy of a document I downloaded from the
7 Inc. magazine website on or about October 13, 2023 at [https://www.inc.com/jason-aten/you-can-now-](https://www.inc.com/jason-aten/you-can-now-stop-facebook-from-tracking-your-activity-on-other-websites-heres-how.html)
8 [stop-facebook-from-tracking-your-activity-on-other-websites-heres-how.html](https://www.inc.com/jason-aten/you-can-now-stop-facebook-from-tracking-your-activity-on-other-websites-heres-how.html), and which Patreon
9 produced with Bates number beginning PTRN-STARK005231. **Exhibit 51** is an article titled “You
10 Can Now Stop Facebook From Tracking Your Activity on Other Websites. Here’s How.” It describes
11 a Facebook privacy setting to manage off-facebook activity.

12 61. Attached as **Exhibit 52** is a true and correct copy of a document that I downloaded on or
13 about October 13, 2023 from Meta’s website at [https://engineering.fb.com/2019/08/20/data-](https://engineering.fb.com/2019/08/20/data-infrastructure/off-facebook-activity/)
14 [infrastructure/off-facebook-activity/](https://engineering.fb.com/2019/08/20/data-infrastructure/off-facebook-activity/), and which Patreon produced with Bates number beginning PTRN-
15 STARK004584. **Exhibit 52** bears the title “Redesigning our systems to provide more control over Off-
16 Facebook activity” and the date of August 20, 2019. The document describes the tools that Facebook
17 made available at that time “that would allow people to see the apps and websites that choose to share
18 activity with us and to disconnect that activity from their accounts.” The document explains the steps
19 that Facebook took so that users could modify their Facebook settings in such a way that a Facebook
20 user could choose to delete Facebooks records of their historical off-Facebook activity and “choose[] to
21 have off-site activity disconnected going forward.”

22 62. Attached as **Exhibit 53** is a true and correct copy of a document that I downloaded on or
23 about October 13, 2023 from Meta’s online Facebook Help Center at
24 <https://www.facebook.com/help/2207256696182627>, and which Patreon produced with Bates number
25 beginning PTRN-STARK004592. **Exhibit 53** bears the title “Review your activity off Meta
26 technologies” and explains how Facebook users can see what information from other websites is shared
27 with Meta as a result of Facebook business tools, including specifically the Meta Pixel.

28 63. Attached as **Exhibit 54** is a true and correct copy of a document that I downloaded on or

about October 13, 2023 from Meta’s online Facebook Help Center at https://www.facebook.com/help/287199741901674?helpref=faq_content, and which Patreon produced with Bates number beginning PTRN-STARK004580.

64. Attached as **Exhibit 55** is a true and correct copy of a document that I downloaded on or about October 13, 2023 from Meta’s website at <https://www.facebook.com/help/336858938174917>, and which Patreon produced with Bates number beginning PTRN-STARK005239. **Exhibit 55** bears the title “Cookies on the Meta Products” and provides information about how Meta uses cookies to track user activity.

65. Attached as **Exhibit 56** is a true and correct copy of a document that I downloaded on or about September 26, 2023 from Meta’s website at <https://mbasic.facebook.com/privacy/policy/printable/>, and which Patreon produced with Bates number beginning PTRN-STARK004796. **Exhibit 56** is the Meta Privacy Policy. The Meta Privacy policy discloses, among other things, that

- a. The Privacy Policy “lets you know your rights.” (PTRN-STARK004797)
- b. The Meta Privacy Policy further states, at PTRN-STARK004802-03, that

We collect and receive information from partners, measurement vendors, marketing vendors and other third parties about a variety of your information and activities on and off our Products.

Here are some examples of information we receive about you:

- Your device information
 - Websites you visit and cookie data, like through Social Plugins or the Meta Pixel
 - Apps you use
 - Games you play
 - Purchases and transactions you make off of our Products using non-Meta checkout experiences
 - Your demographics, like your education level
 - The ads you see and how you interact with them
 - How you use our partners’ products and services, online or in person
 - Partners also share information like your email address, cookies and advertising device ID with us. This helps us match your activities with your account, if you have one.
- c. The Meta Privacy Policy also states, at PTRN-STARK004805, that “We also receive information using cookies and similar technologies, like the Meta Pixel or Social

1 Plugins, when you visit other websites and apps that use our Business Tools or other
2 Meta Products. Read more about information we receive from partners, vendors and
3 other third parties in this policy and in our Cookies Policy.”

- 4 d. The Meta Privacy Policy also includes a link to the tool that permits a user to view and
5 manage off-Facebook activity, PTRN-STARK004854.

6 66. Attached as **Exhibit 57** is a true and correct copy of a document that I downloaded in
7 October from Meta’s website at https://www.facebook.com/off_facebook_activity, which Patreon
8 produced with Bates number beginning PTRN-STARK005265. **Exhibit 57** is the page that a user is
9 directed by clicking on the link described in the previous exhibit, at PTRN-STARK004854. It provides
10 the user with an option to “Disconnect future activity” with the explanation that if the user selects that
11 option, “We’ll disconnect information that businesses and organizations send us about your interactions
12 with them.”

13 67. Attached as **Exhibit 58** is a true and correct copy of a document that I downloaded on or
14 about September 26, 2023 from Meta’s website at [https://www.facebook.com/legal/terms/plain_text_](https://www.facebook.com/legal/terms/plain_text_terms)
15 terms, and which Patreon produced with Bates number beginning PTRN-STARK004893. **Exhibit 58**
16 is the Meta Terms of Use.

17 68. Attached as **Exhibit 59** is a true and correct copy of a document that I downloaded on or
18 about October 13, 2023 from Meta’s website at
19 <https://mbasic.facebook.com/privacy/policies/cookies/printable/>, and which Patreon produced with
20 Bates number beginning PTRN-STARK005248. **Exhibit 59** is the Meta Cookie Policy.

21 69. Attached as **Exhibit 60** is a true and correct copy of a document that I downloaded on or
22 about September 26, 2023 from Reddit’s website at [https://www.redditinc.com/policies/user-](https://www.redditinc.com/policies/user-agreement-september-25-2023)
23 agreement-september-25-2023, and which Patreon produced with Bates number beginning PTRN-
24 STARK004967. **Exhibit 60** is the Reddit User Agreement

25 70. Attached as **Exhibit 61** is a true and correct copy of a document that I downloaded on or
26 about September 26, 2023 from Reddit’s website at [https://www.reddit.com/policies/privacy-](https://www.reddit.com/policies/privacy-policy?rdt=58685)
27 policy?rdt=58685, and which Patreon produced with Bates number beginning PTRN-STARK004960.
28 **Exhibit 61** is the Reddit Privacy Policy.

71. Attached as **Exhibit 62** is a true and correct copy of a document that I downloaded on or about September 26, 2023 from TikTok's website at <https://www.tiktok.com/legal/page/us/terms-of-service/en>, and which Patreon produced with Bates number beginning PTRN-STARK005033. **Exhibit 62** is the TikTok Terms of Service.

72. Attached as **Exhibit 63** is a true and correct copy of a document that I downloaded on or about September 26, 2023 from TikTok's website at <https://www.tiktok.com/legal/page/us/privacy-policy/en>, and which Patreon produced with Bates number beginning PTRN-STARK005018. **Exhibit 63** is the TikTok Privacy Policy.

73. Attached as **Exhibit 64** is a true and correct copy of a document that I downloaded on or about September 26, 2023 from WhatsApp's website at <https://www.whatsapp.com/legal/terms-of-service>, and which Patreon produced with Bates number beginning PTRN-STARK005134. **Exhibit 64** is the WhatsApp Terms of Service.

74. Attached as **Exhibit 65** is a true and correct copy of a document that I downloaded on or about September 26, 2023 from WhatsApp's website at <https://www.whatsapp.com/legal/privacy-policy>, and which Patreon produced with Bates number beginning PTRN-STARK005117. **Exhibit 65** is the WhatsApp Privacy Policy.

75. Attached as **Exhibit 66** is a true and correct copy of a document that I downloaded on or about September 26, 2023 from Twitter's (X's) website at <https://twitter.com/en/tos/previous/version-18>, and which Patreon produced with Bates number beginning PTRN-STARK005170. **Exhibit 66** is the Twitter Terms of Service.

76. Attached as **Exhibit 67** is a true and correct copy of a document that I downloaded on or about September 26, 2023 from Twitter's (X's) website at https://twitter.com/en/privacy/previous/version_19, and which Patreon produced with Bates number beginning PTRN-STARK005155. **Exhibit 67** is the Twitter Privacy Policy.

77. Attached as **Exhibit 68** is a true and correct copy of excerpts of the certified transcript of the Deposition of Brayden Stark, taken on October 4, 2023.

78. Attached as **Exhibit 69** is a true and correct copy of excerpts of the rough transcript of the Deposition of Judd Oostyen, taken on November 7, 2023. At the time of filing, we had not yet

1 received an official certified copy of Mr. Oostyen's deposition transcript.

2 79. Attached as **Exhibit 70** is a true and correct copy of excerpts of the certified transcript of
3 the Deposition of Jason Byttow, taken on August 1, 2023.

4 80. Attached as **Exhibit 71** is a true and correct copy of the complaint filed in *Patreon, Inc.*
5 *v. Does 1-50*, Case No. CGC-22-602931, as filed on November 14, 2022.

6 81. Attached as **Exhibit 72** is a true and correct copy of the dockets for *United States v.*
7 *Sporn*, Case No. 21-10016 (D. Kan.) and *United States v. Batista Montijo*, Case No. 2:21-cr-75-SPC-
8 NPM that I downloaded on or about November 14, 2023.

9 82. Attached as **Exhibit 73** is a true and correct copy of Plaintiffs' amended responses to
10 interrogatories that the Plaintiffs provided in response to discovery Patreon served on them in this
11 litigation.

12 83. Interrogatory Number 4 in **Exhibit 73** states: "State the date YOU first learned of
13 tracking pixels and how YOU learned of them." On November 10, 2023, Plaintiff Stark provided an
14 amended response that he "has been aware for several years that companies utilize tracking pixels in
15 order to track and monetize users' activity online. Plaintiff Stark learned about tracking pixels when
16 the television program Adam Ruins Everything aired an episode regarding online tracking pixels and
17 through YouTube videos on the topic." On November 10, 2023 Plaintiff Oostyen provided an amended
18 response that he "became aware of tracking pixels in the time period immediately preceding the filing
19 of this lawsuit." After receiving Plaintiffs' amended responses, I searched online for a copy of the
20 episode of Adam Ruins Everything concerning online pixels, and located the video on YouTube at
21 <https://www.youtube.com/watch?v=5pFX2P7JLwA>. The title of the six-minute, twenty-second
22 episode is "The Terrifying Cost of 'Free' Websites" and it discusses the use of tracking pixels used
23 specifically by Facebook and Google.

24 84. Interrogatory Number 6 in **Exhibit 73** states: "Identify the personal information YOU
25 allege Patreon shared with Meta through use of the Meta Pixel and the basis for that understanding."
26 Plaintiffs objected to the interrogatory "to the extent that it seeks premature disclosure of expert
27 information. Plaintiffs will produce expert report(s) pursuant to the deadlines established by Federal
28 Rule of Civil Procedure 26, court order, and/or the agreement of the parties." Plaintiffs then provided

1 the following substantive response, in its entirety: “Plaintiffs allege that at least the following personal
2 information is shared with Meta through the use of the Meta Pixel: the titles of prerecorded video
3 content users view on Patreon’s website; Facebook IDs; IP addresses; names; emails; and phone
4 numbers.”

5 85. Interrogatory Number 8 in **Exhibit 73** states: “Paragraph 67 of the First Amended Class
6 Action Complaint alleges, ‘Patreon’s wrongful acquisition and use of their personal and private
7 information deprived Plaintiffs and Class members of control over that information and prevented them
8 from realizing its full value for themselves.’ (Dkt. 41). State the ‘full value’ of YOUR personal and
9 private information and how YOU would have realized it.” Plaintiffs’ entire response was an objection
10 “to the extent that it seeks premature disclosure of expert information.” Plaintiffs did not disclose any
11 expert or expert report on this topic prior to the filing of Patreon’s summary judgment motion.

12 86. Attached as **Exhibit 74** is a true and correct copy of the Facebook Business Tools Terms
13 that were in effect on November 6, 2018, as pulled from The Wayback Machine from the link that
14 follows on November 15, 2023.

15 <https://web.archive.org/web/20181106054429/https://www.facebook.com/legal/businessstech>

16 87. Attached as **Exhibit 75** is a true and correct copy of the Facebook Business Tools Terms
17 that were in effect on October 17, 2021, as pulled from The Wayback Machine from the link that
18 follows on November 15, 2023.

19 <https://web.archive.org/web/20211017071203/https://www.facebook.com/legal/businessstech>

20 88. I have personally reviewed the terms of use, privacy policies, and other user legal terms
21 for numerous companies that distribute video to subscribers online, including Google, Meta, Reddit,
22 TikTok, Twitter, Anthology, Instructure, and Netflix. I am not aware of any company that distributes
23 video to subscribers online that has a written form of consent to disclosure of a subscriber’s identity and
24 specific videos they have requested or obtained, where such consent is in a form distinct and separate
25 from any form setting forth other legal or financial obligations of the consumer and where that consent
26 also allows the user to withdraw consent on a case-by-case basis.

27 89. In the course of my representation of Patreon in this case, I have monitored other
28 putative class actions alleging violations of the VPPA. My firm subscribes to LexMachina, which

1 offers a searchable database of civil litigation filings otherwise accessible on the US PACER system.
2 According to my searches on Lex Machina, since January 1, 2022, over 200 lawsuits have been filed
3 alleging violations of the VPPA on account of an online video distributor's alleged use of a tracking
4 pixel. I am not aware of any case in which a defendant has avoided liability by successfully arguing
5 that it complied with the VPPA's terms and had obtained consent from the plaintiff using a form
6 distinct and separate from any form setting forth other legal or financial obligations of the consumer
7 and where that consent also allows the user to withdraw consent on a case-by-case basis.

8 I declare under the laws of the United States that the statements in this declaration are true and
9 correct to the best of my knowledge, and that this declaration was executed on November 17, 2023 in
10 Oakland, California.

11 /s/ Fred Norton

12 Fred Norton
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